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OFFICE OF THE
EXECUTIVE SECRETARY

Comes Paul G. Summers, the Attorney General & Reporter, through the Consumer and Protection Division of the Office of Attorney General (hereinafter “Attorney”), pursuant to the request of the Tennessee Regulatory Authority (“TRA”), hereby is brief in the public interest regarding legal issues identified by the Hearing Officer at the Pre-Hearing Conference held on February 21, 2001 and states the following:

Whether the TRA has the jurisdiction and authority to establish a mechanism to fund the Tennessee Relay Center through the Universal Service Fund?

The TRA may establish a mechanism to fund the Tennessee relay center through the universal service fund. Section 253(b) of the Telecommunications Act of 1996 (hereinafter referred to as the “Act”) provides the TRA the authority to establish a mechanism to fund the Tennessee relay center through the universal service fund. Section 253(b) states that “nothing in this section shall affect the ability of a State to impose, on a competitively neutral basis and consistent with section 254 of this section, requirements necessary to preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of

consumers.” 47 U.S.C. § 253(b). Accordingly, it would be appropriate for the TRA to adopt regulations and requirements to fund the Tennessee relay system through the Universal Service Fund because it would preserve and advance universal service and would ensure the continued quality of telecommunication services to hearing-impaired citizens of Tennessee.

Hearing and speech-impaired individuals must have reliable, efficient and adequate telephone relay services so that they are able to access emergency services by telephone and have the ability to utilize telephone services to communicate with other individuals. It is imperative that the TRA protect the public safety and welfare of hearing-impaired and speech-impaired citizens of Tennessee by ensuring that Tennessee has an adequate and sufficient relay center. Section 253(b) of the Telecommunications Act of 1996 specifies that a State may impose requirements to protect the public safety and welfare. 28 U.S.C. § 253(b). It is proper for the TRA to use the universal service fund for the relay center and thereby protect the public safety and welfare of hearing and speech-impaired individuals.

The Telecommunications Act of 1996 supports efforts by States to adopt regulations for advancing intrastate relay services in order to preserve and advance universal service. Section 254(f) provides that a State may adopt regulations consistent with Commission’s rules to preserve and advance universal service. 47 U.S.C. § 254(f). By using the Universal Service Fund for the intrastate relay system, the TRA would be advancing universal service.

The primary focus of universal service has been to provide basic service. TENN. CODE ANN. § 65-5-207; and § 65-5-208 (Supp. 2000). The reason for having basic service is to provide citizens with effective access to telecommunications networks. Hearing-impaired individuals are citizens of this state and are entitled to have proper, efficient and effective access to telecommunication services.

If the relay system is not providing basic services that are available to all other citizens, then it would be proper to use the Universal Service Fund to ensure that such basic services are provided to them.

The Attorney General's public interest role before the Authority requires assurance that virtually all our citizens are able to participate and access telecommunication services. Whether an individual is hearing-impaired or not, the TRA has an obligation to ensure that the Universal Service Fund is being used to provide basic services to all citizens of Tennessee. It is critical that those who have hearing disabilities and/or are unable to afford service have access to these basic services and thus, use of the Universal Service Fund would be proper and necessary to ensure that hearing-impaired individuals have basic telephone service.

Furthermore, as stated in TENN. CODE ANN. § 65-4-123, the legislature has indicated that the TRA should establish regulations that protect the interests of consumers, maintain universal service, provide affordable rates for essential telecommunications services and provide basic residential telephone service to all Tennesseans who want telephone service. Utilizing the Universal Service Fund for the Tennessee Relay Center would be consistent with the legislative intent since it would promote the maintenance of universal service and provide affordable rates for essential telecommunication services.

By implementing regulations that utilize the Universal Service Fund for the intrastate relay center, the TRA would be advancing the development of an efficient and technologically advanced relay center. The Tennessee legislature has indicated that alternative forms of regulations may be adopted that foster the development of efficient, technologically advanced statewide systems of telecommunications and specifically states that universal service shall be maintained. TENN. CODE ANN. § 65-4-123 (Supp. 2000). Therefore, using the Universal Service Fund for the intrastate relay

center would be in accordance with the Legislature's mandate concerning the development of technologically advanced telecommunications systems in the State of Tennessee.

TENN. CODE ANN. § 65-4-123 declares the state policy for telecommunications services. One of the goals of the state policy in telecommunications is to ensure the availability of affordable basic local exchange services. Similarly, TENN. CODE ANN. § 65-5-207(a) clearly states that the key aspect of universal service is to "ensure the availability of affordable residential basic local exchange telephone service." Both these sections support using the Universal Service Fund for the relay center for hearing-impaired and speech-impaired individuals so that they can obtain and access affordable basic residential service.

The Telecommunications Act allows for funding of intrastate relay services through the Universal Service Fund. Section 254 provides a funding mechanism for State Universal Service. The Act provides that quality services should be available at just, reasonable and affordable rates to consumers of all regions regardless of income, location or relative cost of services. 47 U.S.C. § 254(1)(2). Furthermore, the Act states that there should be specific, predictable and sufficient federal and state mechanisms to preserve and advance universal service. 47 U.S.C. § 254(5).

Telephone use has become an important part of our daily life and is a necessity. Today, having access to a telephone allows us to effectively participate in society and to access assistance in an emergency. As technology advances, the need for a home telephone has become essential to all citizens in the United States. Individuals need access to telephone service to function as a member of society and to reach out for assistance in an emergency. Those individuals who are hearing-impaired require additional equipment and advanced technology so that they have access to telephone services that are comparable to the service of all other citizens of Tennessee. By using the Universal Service

Fund for Tennessee's relay center, it would permit these individuals to effectively and productively participate and function in society like all other citizens of Tennessee. Most importantly, an adequate relay center would protect the safety of hearing and speech-impaired individuals by ensuring that they have access to the telephone services in the event of an emergency.

The TRA should use the Universal Service Fund for intrastate relay services because the Telecommunications Act states that hearing-impaired and speech-impaired telecommunication services are to be available to all individuals. In order to implement this mandate, there must be an efficient and adequate relay center. Section 225(b) of the Act provides that telecommunications relay services are to be made available to all individuals in the United States. 47 U.S.C. § 225(b)(1). Section 255(c) states that telecommunication service providers shall ensure that service is accessible to and usable by individuals with disabilities. 47 U.S.C. § 255(c). Lastly, the legislative history of the Telecommunications Act of 1996 supports the notion that the rights of the disabled are to be considered and provides for "consideration of the needs of persons with disabilities" in the definition of universal service. S. Rep. No. 103-367, at 54 (1994). These various provisions clearly support utilization of the Universal Service Fund for the intrastate relay system.

The cost for telephone services for hearing and speech-impaired individuals is significantly higher since additional, specialized equipment is needed in order to access basic telephone service. As a result, the TRA must promulgate regulations and establish policies to ensure that the cost of relay services are not greater than rates paid for voice communication services. Section 225(d)(1)(D) of the Act states that users of telecommunications relay services pay rates that are not greater than rates paid for functionally equivalent voice communication services. 47 U.S.C. § 225(d)(1)(D). If hearing and speech-impaired individuals are not able to obtain telephone service at the same rate because advanced

telecommunications equipment is required, then it is necessary for the TRA use the Universal Service Fund to achieve this objective.

Furthermore, any TRA action related to the funding of relay services through the Universal Service Fund is consistent with the actions being taken by other states. Maryland has established a Universal Service Trust Fund program to fund the cost of Lifeline and Telecommunications Relay Service. William P. Cassidy, Jr., *Universal Service in a Competitive Telecommunications Environment: The Current State of Universal Service in the European Union and United States*, 25 N.C. J. Int'l L. & Com. Reg. 107, 153 n. 330 (1999). In 1997, the Texas Legislature established an intrastate universal service funding mechanism. On December 3, 1998, the Texas Public Utility Commission approved an order establishing an interim Texas Universal Service Fund (TUSF). The current TUSF funds three programs: Relay Texas, Tele-Assistance, and a high-cost assistance program. William P. Cassidy, Jr., *Universal Service in a Competitive Telecommunications Environment: The Current State of Universal Service in the European Union and United States*, 25 N.C. J. Int'l L. & Com. Reg. 107, 163 (1999).

Moreover, the United States Senate has addressed telecommunication services for hearing-impaired individuals by defining universal service in § 652, which states:

Universal Service is an evolving level of intrastate and interstate telecommunications services that the Commission, based on recommendations from the public, Congress, and the Federal-State Joint Board . . . and taking into account advances in telecommunications and information technologies and services, determines should be provided at just, reasonable, and affordable rates to all Americans, including those in rural and high-cost areas and those with disabilities, to enable them to participate effectively in the economic, academic, medical, and democratic processes of the Nation. S. Rep. 104-23, at 210 (1995).

Finally, if the TRA used the Universal Service Fund for the intrastate relay services, they would

be advancing the goals of the Americans with Disabilities Act (“ADA”). 42 U.S.C. § 12101. This would provide equivalent phone services for hearing-impaired and speech-impaired individuals. The intent of Title IV of the Americans with Disabilities Act (“ADA”) is to move closer to achieving the goal of universal service by providing hearing and speech-impaired persons with telecommunications services that are functionally equivalent to telephone service provided to hearing individuals. Notice of Proposed Rulemaking (“NPRM”), FCC 90-376, released November 16, 1990.

II. HOW SHOULD THE UNIVERSAL SERVICE INTERSTATE ACCESS FUND BE UTILIZED FOR THE INTRASTATE UNIVERSAL SERVICE FUND

Whether it is proper to use the Universal Service Interstate Access Fund for the intrastate Universal Service Fund?

At this time, the Attorney General has not fully or completely determined how the Universal Service Access Fund should be utilized for the intrastate universal service fund. However, the Attorney General has reviewed the plans used in other states and believes that the State of Wyoming has a plan that contains valid approaches that should be considered by the TRA. A copy of the Wyoming plan is attached as Exhibit A.

III. USE OF UNIVERSAL SERVICE FUNDING FOR ADVANCED SERVICES

Whether the Universal Service Fund should be used for advanced services?

The Telecommunications Act of 1996, Section 254(b)(2) supports funding for advanced telecommunication services. The Attorney General supports this position. In addition, the TRA’s report, “The Digital Divide,” indicates that there is a disparity in advanced telecommunications that has been the result of economic factors. In addition, the historical conception of the rural telecommunication carriers was for economic reasons. At that time, government agencies determined provisions of telecommunication services as in the public interest. Similarly, if universal service

funding for advanced telecommunications is not included under universal service, then the rural areas will lag behind other metropolitan counterparts in providing new technology.

Accordingly, the Universal Service Fund should be used for advanced telecommunications that are widely utilized by most subscribers and/or that garner significant consumer interest. Therefore, it is imperative that universal service be provided to high cost areas because it will enable providers to deploy new advanced technology and maintain their existing plant investment.

IV. FUNDING SECONDARY LINES IN HIGH COST AREAS WITH THE UNIVERSAL SERVICE FUND

Whether secondary lines in high cost areas should be funded by the Universal Service Fund?

The TRA has jurisdiction to use the Universal Service Fund for secondary lines in high cost areas. Section 254(f) allows for states to adopt regulations that are consistent with the Commission's rules to preserve and advance universal service. It provides that states may adopt regulations to provide for additional definitions and standards to preserve and advance universal service within the state so long as such regulations are specific, predictable and have sufficient mechanisms to support such definitions or standards. 28 U.S.C. § 254(f). By using the Universal Service Fund for secondary lines in high cost areas, the TRA would be preserving and advancing universal service.

It is proper for the TRA to use the Universal Service Fund to fund secondary lines in high cost areas. Section 254(b)(3) states that the Federal-State Joint Board and the Commission should consider access in high cost areas to base their policies on preservation and advancement of universal service. 28 U.S.C. § 254(b)(1). In addition, Section 254(b) provides that consumers in high cost areas should have access to advanced telecommunications and information services that are reasonably comparable to those services provided in urban areas and at rates comparable to rates charged for similar services

in urban areas. 28 U.S.C. §254(b)(1). Therefore, in order to provide comparable services at comparable rates in high cost areas the TRA should use the Universal Service Fund to fund secondary lines.

The Tennessee legislature has provided that the TRA must ensure that affordable residential basic telephone service is available and all telecommunication service providers are to contribute to an intrastate universal service fund. TENN. CODE ANN. § 65-5-207(a) of the Tennessee statute provides that “in order to ensure availability of affordable residential basic local exchange telephone service the authority shall formulate policies, promulgate rules and issue orders which require all telecommunications service providers to contribute to the support of universal service.”

The TRA may create an alternative universal service support when it determines that obligations of universal service are not being met. TENN. CODE ANN. § 65-5-207(c) allows the authority to create an alternative universal service support mechanism when it determines that the alternatives will preserve universal service, protect consumer welfare, be fair to all telecommunications service providers and prevent the unwarranted subsidization of any telecommunications service providers rates by consumers or another telecommunications service provider. To accomplish such objectives, there are several considerations that must be determined, including at a minimum intrastate access rates and the appropriateness of such rates as a significant service of universal service support. TENN. CODE ANN. § 65-5-207(c)(8)(iii) (Supp. 2000). Therefore, such considerations would support the use of the Universal Service Fund to accomplish these objectives since secondary lines in high cost areas are not affordable and the goals of universal service are not being satisfied.

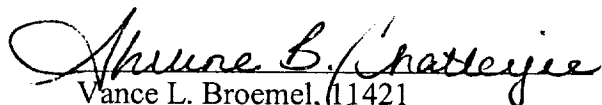
V. CONCLUSION

The Attorney General appreciates the opportunity to support the use of Universal Service Funds

to provide funding to the Tennessee Relay System, advanced services, secondary lines in high cost areas and intrastate Universal Service Fund. Should the TRA have any questions, we stand ready to provide additional information to the TRA upon request.

Respectfully submitted,

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A handwritten signature in cursive script, reading "Shilina B. Chatterjee".

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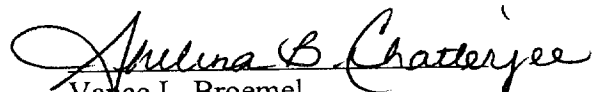
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Wyoming Universal Service Fund

WYOMING RULES AND STATUTES RELATING TO THE UNIVERSAL SERVICE FUND

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EXHIBIT

A

ARTICLE 5. Universal Service Fund

Section 500. Telecommunications Universal Service Fund.

(a) All definitions and provisions contained within W. S. § 37-15-103 and W. S. § 37-15-104 are incorporated herein by reference.

(b) The Commission may contract for the services of a universal service fund manager who shall perform routine collection, distribution, and other activities related to the universal service fund, subject to the oversight and direction of the Commission. The manager's compensation and necessary related expenses shall be incorporated into the required funding computations and paid for through funds collected from telecommunications providers. The Commission shall request the services of the Wyoming Attorney General's Office to enforce its universal service fund rules under W.S. § 37-15-401(a)(ii) including initiating civil proceedings against telecommunications providers that violate the universal service fund rules. The selection of the manager shall be subject to all applicable procurement rules of the State of Wyoming.

(c) No later than February 15th of each year, all telecommunications companies shall provide the information required by the Commission and/or the universal service fund manager to properly perform the computations necessary for collection and distribution of the universal service fund. This information may include names and addresses of purchasers of intrastate access from each local telecommunications provider and names and addresses of pay telephone providers purchasing access to the local telecommunication provider's system, as well as rate and customer data. Specific customer data provided to the Commission and/or the fund manager under this section shall be deemed to be proprietary

unless otherwise determined by the Commission. The universal service fund manager shall make no request for information from telecommunications companies without first having obtained the approval of the Commission to collect the information.

(d) At such time that contributions to and disbursements from the universal service fund become necessary, the universal service fund shall be audited by an independent accountant not affiliated with the fund manager no more frequently than annually and no less frequently than every three years. Expenses related to this audit shall be included in the administrative cost of the fund and shall be incorporated in the required funding computations and paid for through funds collected from telecommunications companies. The independent accountant shall be selected by the Commission under all applicable procurement rules of the State of Wyoming. Once selected, the accountant shall be eligible to perform not more than three (3) consecutive audits.

(e) No later than October 1st of each year, the fund manager shall submit a report to the Commission and to each telecommunications company which contributes to the universal service fund. This report shall summarize the preceding year's activity and shall contain the following:

- (i) statement of collections and distributions from the universal service fund;
- (ii) record of total cost of universal service fund administration; and
- (iii) audit reports and recommendations provided by the independent accountant.

(f) The costs incurred by telecommunications companies associated with making payments into the universal service fund shall not be used as an offset to the required contributions and such costs shall not be incorporated into the funding calculation. Reasonable amounts for administrative costs may be treated as an operating expense.

(g) The statewide weighted average local residential service rate shall be computed by multiplying the number of residential access lines by the rate applicable to each line, with the product of this computation divided by the total number of residential access lines. The rate to be used in the computation shall include all standard charges associated with each telecommunication company's local service. Such charges include, but are not limited to: the local service rate, whether flat rated or measured; touch-tone; and zone and mileage charges. The computation of the weighted statewide average local residential service rate shall exclude bill credits related to prior period Wyoming universal service fund receipts;

federally mandated customer access line charges; mandatory extended area service charges; surcharges for 9-1-1; franchise taxes; the telephone assistance program surcharge; and other similar charges or taxes. The manager shall annually compute both the statewide weighted average residential service rate and each telecommunications company's weighted average residential service rate in a consistent manner based on end of calendar year data taking into account the classification options available to telecommunications companies under paragraph (i) of this rule.

(h) The statewide weighted average local business service rate shall be computed by multiplying the number of business access lines (as contained in the definition of essential services found in W.S. § 37-15-103(a)(iv)) by the rate applicable to each line, with the product of this computation divided by the total number of business access lines. The rate to be used in the computation shall include all standard charges associated with each telecommunications company's local service. Such charges include, but are not limited to: the local service rate, whether flat rated or measured; touch-tone; and zone and mileage charges. The computation of the weighted statewide average local business service rate shall exclude bill credits related to prior period Wyoming universal service fund receipts; federally mandated customer access line charges; mandatory extended area service charges; surcharges for 9-1-1; franchise taxes; the telephone assistance program surcharge; and other similar charges or taxes. The manager shall annually compute both the statewide weighted average business service rate and each telecommunications company's weighted average business service rate in a consistent manner based on end of calendar year data taking into account the classification options available to telecommunications companies under paragraph (i) of this rule.

(i) Each telecommunications company's weighted average local residential service rate and weighted average local business service rate shall be computed separately for each exchange and shall be further distinguished between inside the base rate area and separately for each rural zone outside the base rate area. A telecommunications company may, at its option, provide to the universal service fund manager, a list of each customer class or individual customers whose local service rate, in the absence of universal service fund support, exceeds 130% of the calculated statewide average. Telecommunications companies may, with Commission approval, aggregate customers or customer classes for purposes of determining fund withdrawal eligibility. Wyoming universal service fund support payments shall be distributed on the difference between the rates, as calculated in paragraphs (g) and (h) of this rule, and the 130% benchmark as indicated in paragraph (q) following. For purposes of this rule, telecommunications companies must treat their entire Wyoming certificated service area in a consistent manner.

(j) Mid period revisions to a telecommunications company's weighted average local residential service rate or weighted average local business service rate for purposes of drawing from the fund shall only be permitted upon application and approval by the Commission and after a showing of need or special circumstances.

(k) ~~The statewide and an individual telecommunications company's weighted average local residential service rates and the weighted average local business service rates shall contain an additional computation related to changes in the receipt of federal universal service funds from the previous year. The weighted average local residential service rate and the weighted average local business service rate computed as described above shall have subtracted from it the result of the difference between the amount of federal universal service funds received in the most recent calendar year and the amount most recently used in the computation of rates, divided by the total number of business and residential lines used in computing the weighted average local rate.~~

(l) No later than April 1st of each year, the universal service fund manager shall file with the Commission and with each affected telecommunications company a report that details the computation of the recommended level of assessment that shall be attributable to a percent of gross retail revenues. This recommended level of assessment shall be based on the computed amounts needed for payment to telecommunications companies, the prior year gross retail revenues and any over or under collection in the fund from the previous year. Additionally, such charges shall be assessed as a separate line item on each customer's bill unless a specific waiver is requested and granted by the Commission.

(m) No later than June 1st of each year, the Commission shall issue an order stating the universal service fund level of assessment that shall be applicable for the twelve month period beginning July 1st of each year. The level of assessment shall be multiplied by each telecommunications company's retail revenues for the twelve month period beginning July 1st to determine the payment into the fund by each telecommunications company.

(n) Payments into the universal service fund shall be made within thirty (30) days of the close of each calendar month, beginning September 1, 1998, based on the actual retail revenues from the most recent calendar month. Late payments will be assessed a late payment fee of one and one-half percent (1.5%) monthly.

(o) The universal service fund payment percentage shall apply only to retail revenues and shall not be applied to wholesale transactions. Wholesale services include, but are not limited to: switched access; the use of software defined network services for purposes of resale; interconnection for the resale of local services; and the use of wide area telecommunications service for the

purposes of resale.

(p) Affected telecommunications providers subject to paragraph (l) include but are not limited to: local exchange companies; competitive access providers; interexchange companies; cellular providers; commercial radio common carriers; personal communications service providers; pagers; and pay telephone providers. All telecommunications companies as referenced in W. S. § 37-15-501(a) and those additional companies referenced in W.S. § 37-15-104(a) which avail themselves of the local public switched network shall contribute to the universal service fund.

(q) Distributions from the fund shall be made monthly, beginning October 1, 1998. Pursuant to W. S. § 37-15-501(d), telecommunications companies shall receive funds to the extent that their local exchange rates, after consideration of any contributions from the federal universal service fund, exceed one hundred thirty percent (130%) of the weighted statewide average local exchange rates.

(i) Distributions to telecommunications companies based on weighted average local residential rates shall equal: the difference expressed in dollars by which the weighted average local residential service rate exceeds one hundred thirty percent (130%) of the statewide weighted average local residential service rate multiplied by the total number of residential access lines served by the telecommunications company in the qualified area.

(ii) Distributions to telecommunications companies based on weighted average local business rates shall equal: the difference expressed in dollars by which the weighted average local business service rate exceeds one hundred thirty percent (130%) of the statewide weighted average local business service rate multiplied by the total number of business access lines served by the telecommunications company in the qualified area.

(iii) Telecommunications companies receiving Wyoming universal service funds shall display the amount of such support, for each affected customer, as a separate line item credit on each affected customer's bill unless a specific waiver is requested and granted by the Commission.

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§ 37-15-501. Universal service fund created; contributions; administration.

(a) There is hereby established the universal service fund within the

special revenue fund to be administered in accordance with this section. The fund shall be administered by the commission. All telecommunications companies shall contribute to the universal service fund. The dates for contributions to the fund and disbursements from the fund shall be set by the commission, after notice and opportunity for hearing, as necessary to accomplish the objectives of the fund as specified in subsections (c) and (d) of this section. The costs of administering the fund may be included in determining required contributions.

(b) The commission shall after notice and opportunity for hearing, designate the method by which the contributions shall be calculated, collected and distributed in order to achieve the goals set forth in W.S. 37-15-102. The commission shall authorize an additional monthly charge to customers, in the amount specified by the commission, to recover each contributor's required payment to the universal service fund.

(c) The commission shall administer the monies in the universal service fund to assist only those customers of telecommunications companies located in areas of this state with relatively high rates for essential services. The commission, after notice and opportunity for hearing, shall determine a reasonable amount and a fair method of distributing monies. The commission may authorize a credit to customer bills, in the amount specified by the commission, to reflect distributions received by the local exchange company from the universal service fund. The commission shall ensure that the method shall promote the emergence of competition in providing local exchange service.

(d) In accordance with the method of distribution determined by the commission, a telecommunications company shall receive funds under this section to the extent that its local exchange rates, after consideration of any contributions from the federal universal service fund, exceed one hundred thirty percent (130%) of the weighted statewide average local exchange rates.

(e) The operation of the universal service fund may be suspended by the commission, based upon a public interest finding, after notice and an opportunity for a hearing, that the fund is not then serving its intended purpose.

(f) The commission's decisions under this section shall be subject to the provisions of the Wyoming Administrative Procedure Act.

History: Laws 1995, ch. 181, § 1; W.S. 1977, § 37-15-501.

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§ 37-15-102. Legislative intent.

It is the intent of this act to ensure essential telecommunications services are universally available to the citizens of this state while

encouraging the development of new infrastructure, facilities, products and services. The provision of telecommunications services has been developed and regulated under a monopolistic environment. This act recognizes the increasingly competitive nature of the telecommunications industry and the benefits of competition. It is the intent of this act to provide a transition from rate of return regulation of a monopolistic telecommunications industry to competitive markets and to maintain affordable essential telecommunications services through the transition period, and the provisions of this act shall be construed to achieve those goals.

History: Laws 1995, ch. 181, § 1; W.S. 1977, § 37-15-102

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§ 37-15-103. Definitions.

(a) As used in this chapter:

(i) "Affiliated telecommunications companies" means telecommunications companies:

(A) In which five percent (5%) or more of the voting stock is controlled or owned, directly or indirectly, by a common principal; or

(B) Whose management and policies are found by the commission, after notice and opportunity for hearing, to be controlled by a common principal.

(ii) "Commission" means the public service commission of Wyoming;

(iii) "Competitive telecommunications services" means those services found by the legislature or the commission to be competitive in accordance with W.S. 37-15-102;

(iv) "Essential telecommunications service" means a customer's access to service that is necessary for the origination or termination, or both, of two-way, switched telecommunications for both residential and business service within a local exchange area. Essential telecommunications services are limited to:

(A) Access to interexchange services provided by interexchange telecommunications companies;

(B) Single line flat-rate or single line measured residence or business service;

(C) Transmission service and facilities necessary for the connection between the end user's or customer's premises or location and the local

(D) Services necessary to connect 911 emergency services to the local network;

(E) Switched access, which for the purposes of this chapter shall mean the switching and transport necessary to connect an interexchange telecommunications company with the local exchange central office for the purpose of originating or terminating, or both, the interexchange telecommunications company's switched telecommunications service.

(vi) "Local access transport area (LATA)" means geographic regions created as part of the divestiture of American Telephone and Telegraph Company which defined the areas where regional Bell operating companies were permitted to provide telecommunication services;

(viii) "Local exchange service" means the provision of essential telecommunications service within a local exchange area;

(x) "Price" means any rate or charge set and published in accordance with this chapter and collected by the telecommunications company for any telecommunications service offered by it to the public or other telecommunications companies;

(xii) "Telecommunications service" means the offering or

transmitting for hire of telecommunications by means of telecommunications facilities using wire, radio, lightwave or other means;

(xiii) "Total service long-run incremental cost" means the total forward-looking cost, using least cost technology, for a telecommunications service or basic network function that the telecommunications provider would incur if it were to initially offer such telecommunications service or basic network function;

(xiv) "Universal service" means the general availability of essential telecommunications service at an affordable and reasonable price;

(xv) "Video dial tone service" means the transmission of entertainment video programming and other forms of two-way, interactive video programming using a common video dial tone platform.

(b) In determining the number of access lines of a telecommunications company for purposes of this chapter, the number of access lines of all affiliated telecommunications companies shall be aggregated in this state.

History: Laws 1995, ch. 181, § 1; W.S. 1977, § 37-15-103.
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§ 37-15-104. Services not regulated by this title.

(a) Except for contributions to the universal service fund required pursuant to W.S. 37-15-501 and the assessment levied pursuant to W.S. 37-2-106 through 37-2-109, telecommunications service does not include, and the provisions of this title do not apply to:

(i) One-way transmission of radio or television signals for broadcast purposes, including the one-way transmission of video programming by a cable television or other system as well as subscriber interaction which is required for the selection of video programming;

(ii) Except as provided in this paragraph, home and business and coinless, or coin operated public or semipublic telephone terminal equipment, and the use, location and charges for the use of such equipment. The commission may regulate the location of and charges for coinless or coin operated public or semipublic telephone terminal equipment in areas of the state which the commission finds are not subject to competition for such equipment;

- (iii) Any billing and collection services;
- (iv) Any inside wire and premise cable installation and maintenance;
- (v) Directory services, except as provided in W.S. 37-12-130;
- (vi) Except for the quality of cellular service to the extent not preempted by federal law, telecommunications services using radio spectrum or cellular technology;
- (vii) Video dial tone and multimedia services;
- (viii) Private telecommunications networks, which for the purposes of this act shall mean a system for the provision of telecommunications service by a person or entity for the sole and exclusive use of the person or entity and not for resale directly or indirectly;
- (ix) Nonvoice data services not operated by a company providing local exchange service;
- (x) Networks established by a person other than the local exchange company providing essential telecommunications services within the local exchange area to provide access to interexchange carrier services;
- (xi) Except as provided in this paragraph, direct inward dial services and other services needed by answering services and paging services. To the extent not preempted by federal law or regulation the commission shall regulate direct inward dial services and other services needed by answering services and paging services as noncompetitive services in any local exchange area until there are at least two (2) telecommunications companies effectively offering direct inward dial and other needed services to the answering services and paging services serving that local exchange area;
- (xii) Remote meter reading; and
- (xiii) Any other telecommunications service that is not regulated by this title.

History: Laws 1995, ch. 181, § 1; W.S. 1977, § 37-15-104; 1997, ch. 110, § 1.

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§ 37-15-401. Commission powers.

- (a) In addition to the powers exercised pursuant to the provisions of W.S. 37-15-408, the commission has the power to:

- (i) Investigate the methods and practices of any telecommunications company;
- (ii) Require any telecommunications company to conform to the laws of this state and to all rules, regulations and orders of the commission not contrary to law;
- (iii) Make any rules and regulations, in accordance with the Wyoming Administrative Procedure Act, necessary for the commission to carry out its powers in this chapter, including rules objectively established and consistent with commonly accepted industry standards, where applicable standards exist;
- (iv) Require reports and studies as to prices and terms and conditions of service, necessary and relevant for the commission's exercise of its authority, including those protected as trade secret or confidential based on legitimate competitive or other operational concerns;
- (v) Hold hearings on complaints, or for good cause, upon notice and subject to the provisions of the Wyoming Administrative Procedure Act; and
- (vi) Regulate telecommunications companies only as provided for in this chapter.

History: Laws 1995, ch. 181, § 1; W.S. 1977, § 37-15-401.

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1 or exchange access in a service area served by a rural
 2 telephone company to meet the requirements in section
 3 214(e)(1) for designation as an eligible telecommunications
 4 carrier for that area before being permitted to provide such
 5 service. This subsection shall not apply--

6 “(1) to a service area served by a rural telephone
 7 company that has obtained an exemption, suspension, or
 8 modification of section 251(c)(4) that effectively
 9 prevents a competitor from meeting the requirements
 10 of section 214(e)(1); and

11 “(2) to a provider of commercial mobile services.

12 **~~“SEC. 254. UNIVERSAL SERVICE.~~**

13 “(a) Procedures to Review Universal Service
 14 Requirements.--

15 “(1) Federal-state joint board on universal
 16 service.--Within one month after the date of enactment
 17 of the Telecommunications Act of 1996, the
 18 Commission shall institute and refer to a Federal-State
 19 Joint Board under section 410(c) a proceeding to
 20 recommend changes to any of its regulations in order to
 21 implement sections 214(e) and this section, including
 22 the definition of the services that are supported by
 23 Federal universal service support mechanisms and a
 24 specific timetable for completion

1 of such recommendations. In addition to the members of the
2 Joint Board required under section 410(c), one member of
3 such Joint Board shall be a State-appointed utility consumer
4 advocate nominated by a national organization of State utility
5 consumer advocates. The Joint Board shall, after notice and
6 opportunity for public comment, make its recommendations to
7 the Commission 9 months after the date of enactment of the
8 Telecommunications Act of 1996.

9 “(2) Commission action.--The Commission shall initiate
10 a single proceeding to implement the recommendations from
11 the Joint Board required by paragraph (1) and shall complete
12 such proceeding within 15 months after the date of enactment
13 of the Telecommunications Act of 1996. The rules established
14 by such proceeding shall include a definition of the services
15 that are supported by Federal universal service support
16 mechanisms and a specific timetable for implementation.
17 Thereafter, the Commission shall complete any proceeding to
18 implement subsequent recommendations from any Joint Board
19 on universal service within one year after receiving such
20 recommendations.

21 “(b) Universal Service Principles.--~~The Joint Board and the~~
22 ~~Commission shall base policies for the preservation~~

1 and advancement of universal service on the following
2 principles:

3 “(1) Quality and rates:--Quality services should
4 be available at just, reasonable, and affordable rates.

5 “(2) Access to advanced services:--Access to
6 advanced telecommunications and information services
7 should be provided in all regions of the Nation;

8 “(3) Access in rural and high cost
9 areas:--Consumers in all regions of the Nation, including
10 low-income consumers and those in rural, insular, and
11 high cost areas, should have access to
12 telecommunications and information services, including
13 interexchange services and advanced
14 telecommunications and information services, that are
15 reasonably comparable to those services provided in
16 urban areas and that are available at rates that are
17 reasonably comparable to rates charged for similar
18 services in urban areas.

19 “(4) Equitable and nondiscriminatory
20 contributions.--All providers of telecommunications
21 services should make an equitable and
22 nondiscriminatory contribution to the preservation and
23 advancement of universal service.

1 ``(5) Specific and predictable support
2 mechanisms.--There should be specific, predictable and
3 sufficient Federal and State mechanisms to preserve and
4 advance universal service.

5 ``(6) Access to advanced telecommunications
6 services for schools, health care, and
7 libraries.--Elementary and secondary schools and
8 classrooms, health care providers, and libraries should
9 have access to advanced telecommunications services as
10 described in subsection (h).

11 ``(7) Additional principles.--Such other
12 principles as the Joint Board and the Commission
13 determine are necessary and appropriate for the
14 protection of the public interest, convenience, and
15 necessity and are consistent with this Act.

16 ``(c) Definition.--

17 ``(1) In general.--Universal service is an
18 evolving level of telecommunications services that the
19 Commission shall establish periodically under this
20 section, taking into account advances in
21 telecommunications and information technologies and
22 services. The Joint Board in recommending, and the
23 Commission in establishing, the definition of these services
24 that are supported by Federal universal

1 service support mechanisms shall consider the extent to
2 which such telecommunications services--

3 `` (A) are essential to education, public
4 health, or public safety;

5 `` (B) have, through the operation of
6 market choices by customers, been subscribed to
7 by a substantial majority of residential customers;

8 `` (C) are being deployed in public
9 telecommunications networks by
10 telecommunications carriers; and

11 `` (D) are consistent with the public
12 interest, convenience, and necessity.

13 `` (2) Alterations and modifications.--The Joint
14 Board may, from time to time, recommend to the
15 Commission modifications in the definition of the
16 services that are supported by Federal universal service
17 support mechanisms.

18 `` (3) Special services.--In addition to the services
19 included in the definition of universal service under
20 paragraph (1), the Commission may designate additional
21 services for such support mechanisms for schools,
22 libraries, and health care providers for the purposes of
23 subsection (h).

24 `` (d) Telecommunications Carrier Contribution.--Every
25 telecommunications carrier that provides